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ABSTRACT

This lesson presents an overview of the U. S. Constitution's provision of impeachment as the method for removing the president, vice president, federal judges, and other federal officials from office. The lesson outlines and discusses the impeachment process. It also offers historical background on the framing of the Constitution and on Presidents Andrew Johnson, Richard Nixon, and Bill Clinton. The lesson presents three questions for students to discuss and write about and an activity in which students role play members of the House Judiciary Committee deciding whether hypothetical cases constitute "high crimes and misdemeanors." The lesson provides world wide web links to broadcast media, print media, E-zines, encyclopedias, legal sources, government agencies, and other sources. (BT)

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Web Lesson

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High Crimes and Misdemeanors

The U.S. Constitution provides impeachment as the method for removing the president, vice president, federal judges, and other federal officials from office. The impeachment process begins in the House of Representatives and follows these steps:

1. The House Judiciary Committee holds hearings and, if necessary, prepares articles of impeachment. These are the charges against the official.

2. If a majority of the committee votes to approve the articles, the whole House debates and votes on them.

3. If a majority of the House votes to impeach the official on any article, then the official must then stand trial in the Senate.

4. For the official to be removed from office, two-thirds of the Senate must vote to convict the official. Upon conviction, the official is automatically removed from office and, if the Senate so decides, may be forbidden from holding governmental office again.

The impeachment process is political in nature, not criminal. Congress has no power to impose criminal penalties on impeached officials. But criminal courts may try and punish officials if they have committed crimes.

The Constitution sets specific grounds for impeachment. They are "treason, bribery, and other high crimes and misdemeanors." To be impeached and removed from office, the House and Senate must find that the official committed one of these acts.

The Constitution defines treason in Article 3, Section 3, Clause 1:

> Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Constitution does not define bribery. It is a crime that has long existed in English and American common law. It takes place when a person gives an official money or gifts to influence the official's behavior in office. For example, if defendant Smith pays federal Judge Jones $10,000 to find Smith not guilty, the crime of bribery has occurred.

Prior to the Clinton investigation, the House had begun impeachment proceedings against only 17 officials —one U.S. senator, two presidents, one cabinet member, and 13 federal judges. Two of the17 resigned from office before the House voted to impeach. Of the 15 impeached, the Senate voted to convict only seven — all were federal judges. The Senate dropped the case against the senator, ruling that a senator could not be impeached. One judge resigned from office before the Senate voted on his case. The Senate voted to acquit the other six officials.

In all the articles of impeachment that the House has drawn, no official has been charged with treason. (The closest to a charge of treason was one federal judge who was impeached and convicted for siding with the South and taking a position as a Confederate judge during the Civil War.) Two officials have been charged with bribery. The remaining charges against all the other officials fall under the category of "high crimes and misdemeanors."

What are "high crimes and misdemeanors"? On first hearing this phrase, many people probably think that it is just an 18th century way of saying "felonies and misdemeanors." Felonies are major crimes and misdemeanors are lesser crimes. If this interpretation were correct, "high crimes and misdemeanors" would simply mean any crime. But this interpretation is mistaken.

The Origins of the Phrase

To better understand the meaning of the phrase, it's important to examine how the framers of the Constitution came to adopt it. At the Constitutional Convention in 1787, the framers wanted to create a stronger central government than what existed under the Articles of Confederation. Adopted following the American Revolution, the Articles of Confederation provided for a loose organization of the states. The framers wanted a stronger federal government, but not one too strong. To achieve the right balance, the framers divided the powers of the new government into three branches—the executive, legislative, and judicial. This is known as the **separation of powers**. They also gave each branch ways to check the power of the other branches. For example, although Congress (the legislative branch) makes laws, the president (the executive) can veto proposed laws. This complex system is known as **checks and balances**.

Impeachment of judges and executive officials by Congress was one of the checks proposed at the Constitutional Convention. The impeachment of judges drew widespread support, because federal judges would hold lifetime appointments and needed some check on their power. But some framers opposed impeachment of executive officials, arguing that the president's power could be checked every four years by elections.

James Madison of Virginia successfully argued that an election every four years did not provide enough of a check on a president who was incapacitated or abusing the power of the office. He contended that "loss of capacity, or corruption . . . might be fatal to the republic" if the president could not be removed until the next election.

With the convention agreed on the necessity of impeachment, it next had to agree on the grounds. One committee proposed the grounds be "treason, bribery, and corruption." Another

committee was selected to deal with matters not yet decided. This committee deleted corruption and left "treason or bribery" as the grounds.

But the committee's recommendation did not satisfy everyone. George Mason of Virginia proposed adding "maladministration." He thought that treason and bribery did not cover all the harm that a president might do. He pointed to the English case of Warren Hastings, whose impeachment trial was then being heard in London. Hastings, the first Governor General of Bengal in India, was accused of corruption and treating the Indian people brutally.

Madison objected to "maladministration." He thought this term was so vague that it would threaten the separation of powers. Congress could remove any president it disagreed with on grounds of "maladministration." This would give Congress complete power over the executive.

Mason abandoned "maladministration" and proposed "high crimes and misdemeanors against the state." The convention adopted Mason's proposal, but dropped "against the state." The final version, which appears in the Constitution, stated: "The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors."

The convention adopted "high crimes and misdemeanors" with little discussion. Most of the framers knew the phrase well. Since 1386, the English parliament had used "high crimes and misdemeanors" as one of the grounds to impeach officials of the crown. Officials accused of "high crimes and misdemeanors" were accused of offenses as varied as misappropriating government funds, appointing unfit subordinates, not prosecuting cases, not spending money allocated by Parliament, promoting themselves ahead of more deserving candidates, threatening a grand jury, disobeying an order from Parliament, arresting a man to keep him from running for Parliament, losing a ship by neglecting to moor it, helping "suppress petitions to the King to call a Parliament," granting warrants without cause, and bribery. Some of these charges were crimes. Others were not. The one common denominator in all these accusations was that the official had somehow abused the power of his office and was unfit to serve.

After the Constitutional Convention, the Constitution had to be ratified by the states. Alexander Hamilton, James Madison, and John Jay wrote a series of essays, known as the Federalist Papers, urging support of the Constitution. In Federalist No. 65, Hamilton explained impeachment. He defined impeachable offenses as "those offences which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself."

For the more than 200 years since the Constitution was adopted, Congress has seriously considered impeachment only 18 times. Thirteen of these cases involved federal judges. The "high crimes and misdemeanors" that the House charged against these judges included being habitually drunk, showing favoritism on the bench, using judicial power unlawfully, using the office for financial gain, unlawfully punishing people for contempt of court, submitting false expense accounts, getting special deals from parties appearing before the court, bullying people

in open court, filing false income tax returns, making false statements while under oath, and disclosing confidential information.

Only three of the 18 impeachment cases have involved a president — Andrew Johnson in 1868, Richard Nixon in 1974, and Bill Clinton in 1998. It's important to take a brief look at these three cases to understand how Congress has interpreted "high crimes and misdemeanors."

Andrew Johnson

Andrew Johnson was the only senator from a Southern state who stayed loyal to the union during the Civil War. President Abraham Lincoln, seeking to reconcile with the South, tapped Johnson, a Democrat, as his vice-presidential running mate in 1864. When Lincoln was assassinated at the war's end in 1865, Johnson assumed the presidency. He immediately ran into trouble with the Republican-dominated Congress over Reconstruction of the South. The Radical Republicans supported military rule in the South and voting rights and redistribution of land for blacks. Johnson disagreed and favored a quick return to civilian rule. The two sides grew increasingly farther apart as Congress repeatedly passed Reconstruction legislation, Johnson vetoed it, and Congress overrode his veto. Over Johnson's veto, Congress passed a Tenure of Office Act, which required Johnson to get permission from Congress before firing any member of the executive branch who had been approved by Congress. Johnson responded by firing the secretary of war, Edwin Stanton, a Radical Republican. His firing violated the Tenure of Office Act. But Johnson believed the act was unconstitutional. The House passed 11 articles of impeachment. Eight involved Johnson's violations of the Tenure of Office Act. One charged him with sending orders through improper channels. Another accused him conspiring against Congress, citing a statement he made about Congress not representing all the states. The last summarized the other 10 charges and charged him with failing to enforce the Reconstruction Acts. At the end of the Senate trial, only three charges were brought to a vote. Johnson was saved from conviction on each by one vote.

History has not judged well those who brought the charges against Johnson. The charges are generally seen as politically motivated, based on the extreme disagreement over reconstruction between Congress and the president. They are not viewed as "high crimes and misdemeanors" worthy of removing a president from office. Most commentators look on this impeachment as a severe threat to the separation of powers.

Richard Nixon

The next presidential impeachment case did not arise for more than 100 years. Before taking a look at the Nixon impeachment case, it's worth examining a famous comment made a few years before (in 1970) by then-Congressman Gerald Ford, who would later succeed Richard Nixon as president. For years, Ford had urged the House to impeach a liberal justice on the Supreme Court. Although Ford's attempts failed, he uttered memorable words about "high crimes and misdemeanors." He stated that "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history." Ford argued that "there are few

fixed principles among the handful of precedents." In one sense, Ford is right. If the House votes articles of impeachment, the vote cannot be challenged in court. The Constitution gives the House sole authority over impeachment. So if the House votes articles of impeachment for any reason, the official is impeached and must stand trial in the Senate. But in another sense, Ford is clearly wrong. The framers of the Constitution did not give Congress absolute power to remove judges and executive officials. It wanted Congress to use its impeachment power only in extreme circumstances, when an official had committed "treason, bribery, or other high crimes and misdemeanors." The separation of powers depends on Congress limiting impeachments to these cases.

In 1972, Richard Nixon won a landslide reelection to a second term as president. During the election, burglars, with links to the White House, had been caught breaking into Democratic headquarters at the Watergate Hotel in Washington. The burglary drew little press attention at the time. But it would lead to events that ultimately brought down the president. Nixon may or may not have had advance knowledge of the burglary. He probably feared, however, that its investigation might uncover evidence of political spying and the illegal use of campaign funds on the part of his administration. So he took an active role in obstructing the investigation. He discussed raising hush money for the burglars and enlisted the FBI and CIA in squelching the investigation. In 1974, the House Judiciary committee voted three articles of impeachment. One accused Nixon of obstruction of justice. Another accused him of abuse of power. The third charged him with contempt of Congress for defying the committee's requests to produce documents. Nixon resigned the presidency before the whole House voted on the articles.

The committee had declined to vote an article of impeachment against Nixon for tax evasion. The committee did not believe this was an impeachable offense. It based its conclusion on a staff report, "Constitutional Grounds for Presidential Impeachment," which the committee had ordered prepared before beginning its investigation. This report traced the history, precedents, and grounds for impeachment. The report concluded:

> Not all presidential misconduct is sufficient to constitute grounds for impeachment. . . . Because impeachment of a President is a grave step for the nation, it is predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

The same year Yale Law School professor Charles L. Black published a highly influential book, Impeachment: A Handbook. Black agreed that impeachment is a grave step that should be taken most cautiously. Impeaching a president overturns an election. Black's research led him to the conclusion that a president should be impeached only for "serious assaults on the integrity of the processes of government," or for "such crimes as would so stain a president as to make his continuance in office dangerous to public order."

Black's book cited two examples of presidential misconduct that would not merit impeachment: (1) a president brings a female minor across a state line for "immoral purposes" in violation of federal law and (2) a president obstructs justice by helping hide marijuana for a White House

intern. Black considered it "preposterous" to impeach a president for these acts. These examples would prove relevant to President Clinton's impeachment case more than 20 years later.

Bill Clinton

Bill Clinton was elected president in 1992 and reelected in 1996. During his first term, an independent counsel was appointed to investigate Whitewater, an Arkansas land deal involving Clinton that had taken place about 20 years previously. The counsel's investigation later expanded to include scandals surrounding the firing of White House staff in its travel office, the misuse of FBI files, and an illicit affair that the president had with a White House intern. In 1998, Independent Counsel Kenneth Starr issued a report to the House Judiciary Committee. It found 11 possible impeachable offenses, all related to the intern scandal. Based on the independent counsel's investigation, the House Judiciary Committee voted four articles of impeachment. The first article accused the president of committing perjury before a grand jury convened by the independent counsel. The second charged him with providing "perjurious, false and misleading testimony" in a civil case related to the scandal. The third accused him of obstructing justice to "delay, impede, cover up and conceal the existence" of evidence related to the scandal. The fourth charged that he misused and abused his office by deceiving the American public, misleading his cabinet and other employees so that they would mislead the public, asserting executive privilege to hinder the investigation, and refusing to respond to the committee and misleading the committee about the scandal.

During the Judiciary Committee's hearings, experts testified on what constituted "high crimes and misdemeanors." The experts called by the Democrats argued that none of the allegations against the president rose to the level of "high crimes and misdemeanors." These experts echoed the reasoning found in the 1974 staff report and Professor Charles Black's book on impeachment.

The experts called by the Republicans disagreed. They pointed out that federal judges had been removed from office for perjury. They further argued that the president had taken an oath to uphold all the laws and he had violated his duties as the nation's chief law enforcement officer.

For Discussion and Writing

1. Explain the impeachment process.

2. Why do you think the framers of the Constitution made the House and Senate responsible for impeachments and not the judicial branch?

3. In your opinion, what are high crimes and misdemeanors?

ACTIVITY

In this activity, students role play members of the House Judiciary Committee deciding whether hypothetical cases constitute "high crimes and misdemeanors."

Divide the class into small groups. Each group will role play House Judiciary Committee.

Do the following:

1. Read and discuss each of the four hypothetical cases.

2. Decide for each case whether the action described in it constitutes a "high crime and misdemeanor."

3. Prepare to report your decisions and the reasons for them to the rest of the class.

Hypothetical Case #1

> The president, after a long feud, has killed a political opponent. The state in which the killing occurred has indicted the president for murder.

Hypothetical Case #2

> The president has committed bigamy. His previous wife left him 30 years ago, but he failed to get a proper divorce before remarrying. He made false statements on the forms he filled out to get a marriage license.

Hypothetical Case #3

> The president has secretly sent assassins to kill a hostile foreign leader. This violates U.S. law.

Hypothetical Case #4

> The president has just pardoned five high-ranking members of his administration who had been convicted and sentenced to five years in prison for bribery. The president had nothing to do with the bribery scandal.

Impeachment Links

Broadcast Media

ABC "A President in Crisis" http://abcnews.go.com/sections/us/underinvestigation4/index.html

CBS "Whitehouse Under Fire" http://www.cbs.com/prd1/now/template.display?p_section=825

CNN "Investigating the President"
http://www.cnn.com/ALLPOLITICS/resources/1998/lewinsky/

Court TV "Clinton in Crisis" http://www.courttv.com/casefiles/clintoncrisis/

C-SPAN "Investigation of the President" http://www.c-span.org/guide/executive/investigation/

Fox "Investigating Clinton" http://www.foxnews.com/news/packages/president/index.sml

MSNBC "The Clinton Crisis" http://www.msnbc.com/news/clintonunderfire_front.asp

PBS "Starr Investigation" http://www.pbs.org/newshour/bb/white_house/starr_archive.html

Print Media

Christian Science Monitor "President Clinton: A Time for Reckoning"
http://www.csmonitor.com/reckoning/index.shtml

Los Angeles Times "Clinton Under Fire"
http://www.latimes.com/HOME/NEWS/REPORTS/SCANDAL/.

New York Times "The President Under Fire"
http://www.nytimes.com/auth/login?Tag=/&URI=/library/politics/clintonlewinsky-index.html

USA Today "The Starr Report" http://www.usatoday.com/news/special/starr/starrix.htm

Washington Post "Clinton Accused"
http://www.washingtonpost.com/wp-srv/politics/special/clinton/clinton.htm

E-zines

Intellectual Capital.com "Clinton/Starr Files"
http://www.intellectualcapital.com/politics/clinton_starr/

Salon Magazine "The Clinton Crisis" http://www.salonmagazine.com/news/1998/01/23list.html

Encyclopedias

Grolier Online "Impeachment" http://www.grolier.com/presidents/ea/side/impeach.html

Legal Sources

Guide to Impeachment and Censure Materials Online http://jurist.law.pitt.edu/impeach.htm
JURIST: The Law Professors' Network recommends resources under these categories: Impeachment Primers, Constitutional and Statutory Provisions on Impeachment, Impeachments in History, Impeachment Procedures, Cases on Impeachment, Censure, Clinton Controversy, and Academic Opinion.

Legal Information Institute "Backgrounder on Impeachment"
http://www.law.cornell.edu/background/impeach/impeach.htm
From the Law School at Cornell University.

A Brief Guide to Impeachment http://www.law.lmu.edu/manheim/cl1/impeach.htm
From Professor Karl Mannheim, Loyola Law School, Los Angeles.

FAQs and Web Resources on the Impeachment Process
http://www.abanet.org/publiced/impeachment.html
From the American Bar Association.

Government

Whitehouse Memorandum Regarding Standards for Impeachment
http://www.whitehouse.gov/WH/New/html/clinton10-2b.html

House Judiciary Committee Impeachment Inquiry
http://www.house.gov/judiciary/icreport.htm

Constitutional Grounds for Presidential Impeachment
http://www.house.gov/lofgren/watergatereport.html

The 1974 report by the staff of the House Judiciary Committee, which examined the history, grounds, and proper uses of impeachment prior to the committee's hearing on the Nixon impeachment.

Other Sources

Policy.com "Congress Considers Impeachment" http://www.policy.com/reports/clinton_starr/

The Presidency A to Z "Impeachment" http://books.cq.com/freeResources/impcopy.htm

Northern Light "The Starr Report" http://special.northernlight.com/starr/

Andrew Johnson

Andrew Johnson's Impeachment Ordeal
http://www.intellectualcapital.com/issues/98/0219/icsmart.asp
By Daniel Glover, associate editor of IntellectualCapital.com, an e-zine.

Andrew Johnson, Impeachment and President Clinton
http://www.nando.net/nt/special/loy0221.html
By Wesley Loy, a reporter for the News-Sentinel in Knoxville, Tenn.

Impeachment Trial of Andrew Johnson http://odur.let.rug.nl/~usa/B/spchase/chase05.htm
From a biography of Samuel Chase, the chief justice who presided over Johnson's trial in the Senate.

Finding Precedent: The Impeachment of Andrew Johnson
http://www.impeach-andrewjohnson.com/
HarpWeek presents excerpts from the Harper's Weekly coverage of the 1868 Johnson impeachment.

The Impeachment of Andrew Johnson http://crf-usa.org/impeachment1.html
By Constitutional Rights Foundation.

Richard Nixon

Watergate 25 http://www.washingtonpost.com/wp-srv/national/longterm/watergate/front.htm
The Washington Post's 25th anniversary site on Watergate.

The American Experience: Nixon http://www.pbs.org/plweb-cgi/fastweb?getdoc+pbsonline+pbsonline+41609+0+wAAA+impeachment%26%28impeachment%29%3Ahomepage%26%28impeachment%29%3Astation
PBS profile of the Nixon presidency

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